LCW LIEBERT CASSIDY WHITMORE

401 WEST A STREET, SUITE 1675
SAN DIEGO, CALIFORNIA 92101
T: 619.481.5900 F: 619.446-0015

kchicas@lcwlegal.com
310.981.2059

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VIA EMAIL
Kristina.gonzalez@perb.ca.gov

Public Employment Relations Board
c/o Ms. Kristina Gonzales
Assistant to the Board
1031 18th Street
Sacramento, CA 95811

Re: ***LCW Written Comments on PERB's Proposed Regulation Packages***
Client-Matter: LC020/051

Honorable Board Members:

Thank you for the opportunity to provide input regarding PERB's proposed regulation packages. Liebert Cassidy Whitmore ("LCW") submits the following comments concerning several of the proposed regulations.

SUBJECT: EXCEPTIONS

Regulation 32300

Summary of proposed changes:

PERB proposes to streamline the filing requirements for initial exceptions. Under the proposed changes, a party would file one integrated document, rather than a separate statement of exceptions and legal brief in support, with a 14,000 word cap (subject to extension for cause), and would not have to file multiple copies with the Board. Filing would be subject to Section 32135. PERB also proposes to loosen the specific criteria required in the statement of exceptions.

Specific changes of note and comments:

Current	Proposed Change	Comment on Proposed Change
(a) Parties must file multiple copies of exceptions with the Board.	Parties follow the same filing procedure as other PERB filings (electronic is allowed, no multiple copies).	AGREE. The new procedure streamlines the filing procedure, brings it in line with other PERB filings, and saves paper and delivery costs.

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	(a)(1), (a)(4) Parties must state specific issues (of procedure, fact, law, or rationale) for each exception, and state the grounds for each exception.	Parties would be required to "clearly and concisely state why the proposed decision is in error."	DISAGREE. While attorneys representing parties may appreciate the broader parameters and flexibility to state the reasons the decision is in error, this change loosens the structure for exceptions. The concern is that a *pro per* employee or advocate who lacks strong analytical writing will produce vague, ambiguous "reasons" for the exceptions. By requiring the parties to identify specific problems that can form the basis for the exceptions (issues of procedure, fact, law, or rationale), the regulations provide structure for a less sophisticated party. All parties and PERB benefit if the statement of exceptions clearly identifies the purported problems in the ALJ's proposed decision.
	(a)(2) Parties must identify the page and part of the decision to which each exception is taken.	Parties would not be required to cite specifically to the ALJ proposed decision.	DISAGREE. As noted above, while additional flexibility might be welcome in some instances, a less sophisticated party could file exceptions without citing to the specific problems they find in the ALJ's proposed decision. Responding to this type of statement would be challenging and would lead to ambiguity as to the scope of the challenge to the ALJ's proposed decision. It also increases the likelihood that the exception will refer to facts or evidence not presented to the ALJ for consideration.

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	(a)(3) Parties must designate the page and exhibit in the record relied up on for each exception.	(a)(2) Parties would cite to the relevant exhibit or transcript page in the case record to support factual arguments.	AGREE. This clarifies that the "page" cited is the page in the hearing transcript, and clarifies that citations to evidence and the record support factual arguments.
		(a)(3) Parties would cite to legal authority to support legal arguments.	AGREE. Like the revision to (a)(2), this designates legal citations for legal arguments, which provides more structure for less sophisticated parties, and hopefully would lead to less ambiguity or vagueness when they establish the basis for their exceptions.
	(b)	Proposes to integrate the statement of exceptions and legal brief, with a 14,000 word limit (subject to extension in subdivision (e)).	AGREE. Combining the statement of exceptions and brief in support is a POSITIVE change. It streamlines the formulaic procedures to have a separate statement and brief in support. 14,000 words is approximately 28 pages, which will generally be sufficient to succinctly identify the factual and legal bases for the exceptions. Section (f) would allow longer briefs for good cause.
	(b) Reference shall be made in the statement of exceptions only to matters contained in the record of the case.	(c) Exceptions shall cite only to evidence: (1) in the record of the case, (2) in the record of another case before PERB, or (3) of which administrative	DISAGREE IN PART. We agree with allowing citation to evidence of which administrative notice is proper. However, we disagree with the change allowing a party to cite evidence that is in the record of a different case that is "before

SUBJECT: EXCEPTIONS			
		notice may properly be taken.	PERB." First, the statement of exceptions should be limited to citing evidence in the case that is the subject of the exceptions (plus evidence for which administrative notice would be appropriate). To expand the factual basis on which a party could raise exceptions would blur the lines between the current case at issue and others that are inherently based on a different set of facts and circumstances. As a result, the Board would be in a position to consider evidence that was not before the ALJ, and therefore was not part of the decision that is subject to exceptions. Additionally, it is unclear what a case "before PERB" means. It could be limited to those that the Board is currently considering, or in an ongoing hearing with an ALJ, or a different decision that was decided on separate facts and circumstances. The vague scope is confusing and invites parties to try to cite to irrelevant material that will be time-consuming and amount to an inefficient use of resources to try to track down and analyze. For these reasons, we would urge PERB to strike the proposed language allowing citation to the record in another PERB case. LCW would support the following

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			proposed change: (c) Exceptions shall cite only to evidence: ~~(1)~~ in the record of the case, ~~(2) in the record of another case before PERB~~, or ~~(3)~~ of which administrative notice may properly be taken.
		(d) A statement of exceptions must comport with the regulations to be considered by the Board itself, absent good cause.	AGREE. This will assist PERB in controlling the volume of exceptions by refusing to consider procedurally deficient statements of exceptions. However, this leaves the opportunity for another representative of PERB (but not the Board) to consider the matter.
		(e) The Board itself will not consider issues and arguments raised in the statement of exceptions, or arguments raised in the statement of exceptions that "do not impact the outcome of the case." The Board may still apply the unalleged violations doctrine and make *sua sponte* findings of fact or conclusions of law.	DISAGREE IN PART. We agree that the Board should not consider issues and arguments that were not raised in the statement of exceptions. However, the proposed changes would allow the Board to consider arguments that only *impact*, rather than *change* the outcome of the case at hand. LCW concurs with the comment provided by Sloan Sakai on June 4, 2019, that this proposed change would be an undue departure from the Board's threshold for review – that the "Board should not be forced to expend its limited resources correcting harmless errors." *Fremont Unified School District* (2003) PERB Decision No. 1528. PERB's proposed change would

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<tr><th colspan="4">SUBJECT: EXCEPTIONS</th></tr>
<tr><td></td><td></td><td></td><td>create the situation the Fremont decision seeks to prevent – forcing the Board to expend its limited resources correcting harmless errors. By limiting review of exceptions to those that will actually change the outcome of the case "<u>or the law of the case for the parties affected</u>" – PERB could preserve its limited resources for the meritorious matters that warrant its attention.

LCW would support the following proposed change:

(e) The Board itself will not consider issues and arguments raised in the statement of exceptions, or arguments raised in the statement of exceptions that "do not <s>impact</s> <u>change</u> the outcome of the case <u>or the law of the case for the parties affected</u>." The Board may still apply the unalleged violations doctrine and make sua sponte findings of fact or conclusions of law.</td></tr>
<tr><td></td><td></td><td>f) A party may request an extension of the 14,000 word limit, for good cause and with five days' notice.</td><td>AGREE. This balances the well-reasoned cap on most statements of exception.</td></tr>
<tr><td>Regulation 32310</td><td colspan="3">Summary of Proposed Changes:

PERB proposes changes for responses to exceptions that essentially mirror those for statements of exceptions. A response that also includes cross-exceptions will</td></tr>
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	be subject to a 28,000 word cap, with the same opportunity to extend for good cause. **LCW Response**: Please see comments to Regulation 32300. LCW AGREES with the proposed amendments to 32310(c), capping a party's concurrent response to exceptions and filing cross-exceptions to 28,000 words, subject to extension for good cause.
Regulation 32315	Summary of Proposed Changes: PERB proposes to consider reply briefs where a response has raised new issues, discussed new case law, or formulated a new defense, or the Board has otherwise determined that a reply would assist it in deciding the case. The Reply would be due within 10 days after the Opposition, and would be subject to a 5,000 word cap, which could be extended for good cause. **LCW Response**: We DISAGREE with this provision. It unnecessarily commits PERB's resources and delays the Board's ability to issue decisions. PERB already has the discretion to consider reply briefs.

SUBJECT: RECUSALS	
Regulation 32155	Summary of proposed changes: PERB proposes to make significant modifications to its standards for recusing Board members and agents, as well as the procedures for filing motions for those recusals. Specific changes of note and comments:

Current	**Proposed Change**	**Comment on Proposed Change**
(a)(1) Prevents a Board member and agent from deciding or participating in a	(b)(1) Also requires recusal of Board members and agents due to a financial interest, and expands	AGREE. This expansion is a positive change.

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	case or proceeding in "which he or she has a financial interest in the outcome."	on this ground to instances where a Board member or agent is "indebted, through money borrowed as a loan, to a party, party representative, or witness in the case or proceeding."	
	(c) Initially refers to the recusal of a "Board agent performing an adjudicatory function ...."	(b) More broadly refers to recusal of a "Board member, Board agent, conciliator, mediator, or other PERB officer, employee, or contractor ...."	AGREE IN PART. This broader inclusion and clarification of individuals subject to recusal is, in general, a positive change, accounting for the various roles PERB representatives serve throughout the proceedings. The proposed change, however, may inadvertently rule out recusal of Administrative Law Judges, or create ambiguity regarding the subject, given the departure in language of "agents performing an adjudicatory function." To dispel potential ambiguity, the proposed regulation should include this language when initially referring to a "Board agent."
	No regulatory requirement for recusal based on connection to a witness.	Proposed regulation mandates recusal of a Board member or agent based on his/her connection to a witness (indebtedness to a witness (Section 32155(b)(1));	DISAGREE IN PART. The main concern with this proposed regulation is how it will apply in practice. Currently, there is no requirement that parties engage in any pre-hearing exchange of witnesses. Therefore, other than what is contained in the documents filed with PERB

SUBJECT: RECUSALS				
			relationship to a witness (Section 32155(b)(2)); and previous affiliation to a witness (Section 32155(b)(4)(A)(ii)-(iii), and (b)(4)(B)(ii)-(iii)).	before a hearing, no other party or entity will necessarily receive advance notice of the witnesses that will testify in a proceeding. Additionally, parties will often call witnesses purely for rebuttal purposes, and not necessarily as part of their case-in-chief. Unless the Board also adopts a regulation requiring pre-hearing exchange of witnesses and evidence (which we would generally be in favor of), Proposed PERB Regulation 32155 may result in situations where a Board agent must recuse himself/herself on the day of a hearing after discovering who the testifying witnesses are, resulting in further delay and lost resources. Further, this basis for recusal will have limited application to recusal of Board agents who process charges. Other than what is alleged in the charge and respondent's position statement, the Board agent will have limited knowledge regarding the full list of witnesses. Also, Proposed PERB Regulation 32155 may also lead to situations where parties may claim that given the relation of a Board agent to a witness, that the Board agent should never have served in that capacity or issued a Complaint. Given these concerns, while we agree with this proposal in

SUBJECT: RECUSALS			
			principle, we recommend leaving out the reference to witnesses as a specific basis for recusal. The due process concerns can be mitigated through other measures. For example, Board members and agents can notify involved parties of the potential disqualifying interest given their connection to a witness. These issues can be handled on a case-by-case basis, but should not necessarily serve as a basis for recusing those Board members and agents.
	(a)(3) Requires recusal of a Board member and agent when he/she was an attorney or counsel for any party in a case or proceeding, or if he/she advised any party regarding any matter involved in the proceeding before the Board.	(b)(3) Contains similar requirements for recusal if a Board member or agent participated in events giving rise to a proceeding or served as a party representative, except it leaves out specific language requiring recusal of Board members and agents if they have advised any party involving a matter in the proceeding.	Although the Proposed Regulation's broad language would likely require recusal of a Board member or agent who previously advised a party in a proceeding, there are situations where one could advise a party without necessarily "participating" in events giving rise to a proceeding or serving as a party representative. Accordingly, we recommend the Board also explicitly include this instance as a mandatory basis for recusal.
	(a)(3) Requires recusal of Board members and agents based on former affiliation with a party, such as when, "in the	(b)(4) Similar to the current regulation, the proposed regulation also provides that Board agents who served in those affiliate roles	DISAGREE WITH (b)(4)(A)(iii) and (b)(4)(B)(iii). Unlike the other bases for recusal in the proposed regulation, this proposal references a much more tenuous connection to a party or proceeding. As opposed to

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	case or proceeding, he or she has been attorney or counsel for any party; or when he or she has given advice to any party upon any matter involved in the proceeding before the Board; or when he or she has been retained or employed as attorney or counsel for any party within one year prior to the commencement of the case at the Board level."	within one year prior to the initial filing date of a proceeding (and anytime thereafter), and that Board members who served in those affiliate roles within one year prior to a matter being placed on the Board's docket (and anytime thereafter), must be recused. Also, (b)(4)(A)(iii) and (b)(4)(B)(iii) provide that Board members and agents must be recused if, within the one-year benchmark, they held a paid position with a law firm, legal department or other organization representing a person or entity that is a party or witness in the case or proceeding.	actually serving as the representative in a proceeding or specifically serving as an attorney for a party, merely holding a paid position with a law firm or organization representing a party should not be a basis for recusal. As PERB ruled in *County of Tulare* (2016) PERB Decision No. 2461a-M, another Board member's "[m]ere past association with a law firm that represents [a party] [did] not establish that [the] Member [] had knowledge of any facts pertaining to [a] case." Therefore, knowledge and involvement in the case at hand are the integral factors for establishing a disqualifying interest. The proposed regulation would undercut this reasonable principle, and unnecessarily recuse several Board members and agents in the future. We encourage the Board to omit this proposed modification to PERB Regulation 32155.
	(f) "Any party to a case before the Board may file directly with the Board member a motion for his or her recusal from the case when exceptions are	(d) "Any party to a case or proceeding before the Board itself may file directly with the Board a written motion to recuse any Board member … A motion for recusal	AGREE IN PART. Proposed PERB Regulation 32155(d) significantly modifies the current process for filing a motion to recuse a Board member. Under the proposed regulation, parties would no longer have to file the recusal motion with the

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	filed with the Board or within ten days of discovering a disqualifying interest provided that such facts were not available at the time exceptions were filed."	must be filed no later than twenty (20) days after the party first knew or should have known that the Board member has been assigned to a panel or proceeding."	particular Board member involved, or be required to wait to file a recusal motion until filing their exceptions to proposed decisions with the Board. These proposed revisions are generally welcomed changes. However, the timeline for filing recusal motions is tied to when the party "first knew or should have known that the Board member has been assigned to a panel in the case or proceeding." (Section 32155(d).) Currently, there is no official instance or administrative process for when a party learns which Board members are on a panel to decide a case. PERB could consider creating a process where it issues notices to parties advising them beforehand as to who is on the panel, and if that panel is subsequently changed. Until PERB creates such a process, the proposed revisions are inapplicable. Further, there may be instances where a Board member must be recused based on events happening after they were assigned to a panel to decide the case. The proposed timeline for filing recusal motions does not account for these circumstances. To mitigate these issues, PERB could consider adding the

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			italicized bold language as follows: "Any party to a case or proceeding before the Board itself may file directly with the Board a written motion to recuse any Board member … A motion for recusal must be filed no later than twenty (20) days after the party first knew or should have known that the Board member ***may be*** assigned to a panel or proceeding, ***or, if such facts were not available at that time, no later than twenty (20) days after discovering a disqualifying interest.***" Further, in addition to specifying the timelines for filing recusal motions and responses, PERB should consider adopting timelines for ruling on recusal (and other) motions.
	(f) "The motion [for recusal of a Board member] shall be supported by sworn affidavits stating the facts constituting the ground for disqualification of the Board member. Copies of the motion and supporting affidavits shall be served on all	(d) "Any party to a case or proceeding before the Board itself may file directly with the Board a written motion to recuse any Board member … The motion shall set forth by competent evidence all relevant facts."	AGREE IN PART. The proposed regulation expressly leaves out the current requirements for parties to include sworn affidavits in their motions. The term "competent evidence" is ambiguous, and may or may not include sworn affidavits under certain circumstances. While we would lean towards maintaining such a requirement, the Board should make clear what would constitute (at a minimum) "competent evidence," to prevent confusion and erroneous filings.

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	parties to the case."		
	(c) "Any party may request the Board agent to disqualify himself or herself whenever it appears that it is probable that a fair and impartial hearing or investigation cannot be held by the Board agent to whom the matter is assigned. Such request shall be written, or if oral, reduced to writing within 24 hours of the request."	(e) "Any party to a case or proceeding that is not before the Board itself may file a motion to recuse any Board agent … Such motion shall be written, or if oral, reduced to writing within 24 hours of the motion."	DISAGREE. The proposed regulation carries over the option of a party making a recusal motion orally, and then subsequently reducing it to writing. This appears unnecessary and impracticable in light of the fact that the proposed PERB Regulation requires a party to file the motion, and provides a specific timeline for other parties to respond to the motion within ten days after service of such motion. Given the accompanying requirements in making recusal motions, PERB should only allow parties to make written recusal motions.

SUBJECT: REGULATIONS ON SUBPOENAS, MOTIONS AND AUTHORITY OF BOARD AGENTS	
Regulation 32150	Summary of Proposed Changes: PERB proposes to distinguish between testimonial and records subpoenas and set requirements for both. PERB also proposes to provide specific procedures for timelines for production and objections to records subpoenas. Parties must object to subpoenas through a motion or at the pre-hearing conference. While the draft revised regulations maintain the procedure for PERB to enforce subpoenas in superior court, the proposed regulations offer an alternative process in which PERB may draw adverse inferences based on a party's failure to respond to a records subpoena.

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LCW Response: We appreciate the Board's action to revise Regulation 32150 to distinguish between testimonial and records subpoenas. However, we provide the following comments specific to particular language in the draft revised regulation.

Current	Proposed Change	Comment on Proposed Change
(g) To enforce a subpoena, PERB may apply to an appropriate superior court for an order requiring such person to appear and produce evidence and give testimony regarding the matter under investigation or in question.	(h) In alternative to the procedure set out in subdivision (g), the Board may draw adverse inferences from a responding party's failure to comply with a valid subpoena, and may prohibit such a responding party from presenting evidence or arguments, as the interests of fairness may require.	DISAGREE: Along with other commenters, we strongly object to a revised process that would allow the Board to draw adverse inferences from a party's failure to comply with a subpoena, without first seeking an order from the appropriate superior court. This could have significantly negative effects on a party who has objected to a subpoena for records in good faith, such as, for example, on privilege grounds. While we recognize that the revised regulations seek to streamline processes and avoid delays, we believe that the Board (or Board agent) should be required to seek an order from a court to enforce a subpoena, and should not simply have the option to avoid that process. Rather, PERB should provide a party that has objected to a subpoena the right to obtain a ruling from the superior court. The draft revised regulation provides the Board (or Board

SUBJECT: REGULATIONS ON SUBPOENAS, MOTIONS AND AUTHORITY OF BOARD AGENTS			
			agent) with the authority to revoke and limit subpoenas, and to order production after resolving these issues. The draft revisions to Regulation 32170 also give the Board agent the ability to issue protective orders and limit use of, or access to, records at the hearing. These powers should provide the efficiency that the draft revised regulations intend to effectuate without having to resort to providing the Board the option to draw adverse inferences from a party's failure to comply with a subpoena.
	(d) A written motion to revoke a subpoena may be filed prior to the proceeding or made by an oral motion at the commencement of the proceeding. The Board may revoke the subpoena if the evidence requested to be produced is not relevant to any matter under consideration in the proceeding or the subpoena is otherwise invalid.	(e)(2) The Board may revoke or limit a records subpoena to the extent items requested to be produced are not relevant to any matter under consideration in the proceeding or are protected by an applicable privilege, or the subpoena is otherwise invalid.	SUGGESTED REVISION: We propose that PERB revise draft regulation 32150 at subdivision (e)(2) to provide the bases for which the Board may revoke the subpoena. Currently, the draft revised regulation provides that the Board may revoke the subpoena based on relevance, privilege, or if the "subpoena is otherwise invalid." We have two concerns with this language. First, it is unclear whether the draft revised regulation's definition of an "invalid" subpoena is one a party improperly served or did not meet the procedural requirements for issuance of a subpoena. Second, if the draft revised regulation

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			intends the basis for revocation or limitation based on the invalidity of the subpoena to be based on service or procedural defects, rather than other substantive bases for revocation or limitation, we request that PERB include additional bases for revocation or limitation of the subpoena.
Regulation 32170	Summary of Proposed Changes: PERB proposes to provide additional authority to the Board agent. This authority already includes the authority to issue subpoenas, rule on motions related to subpoenas, order the parties to prehearing conferences, approve or reject proposed stipulations, including fact stipulations that would avert the need for an evidentiary hearing or a portion of an evidentiary hearing, or review records in camera and issue protective orders limiting use of, or access to, records. The proposed regulation would provide the Board agent the authority to resolve the following at the prehearing conference: scheduling issues, subpoena disputes, motions, requests to consolidate proceedings, requests to bifurcate proceedings, requests to stay, abate, or continue proceedings, and other substantive or procedural matters. **LCW Response:** We appreciate and agree with the draft revised Regulation 32170's addition of the authority to hold pre-hearing conferences to the authority of the Board agent. We had previously understood that the informal conference could serve as a pre-hearing conference in which the parties could address stipulations, narrow issues, schedule hearings and other matters, and address other requests or motions. However, in our experience, the Board agents have generally limited the informal conference to settlement negotiations and the scheduling of a hearing if the parties did not reach settlements. The addition of the authority to hold a prehearing conference will provide the parties with a time and place to address the issues described above, which should – in most cases – provide for a faster and more efficient hearing before the Administrative Law Judge. As discussed above, we do not believe giving a Board agent the authority to conduct in-camera review of records, issue protective orders, or limit access to or		

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<tr><th colspan="2">SUBJECT: REGULATIONS ON SUBPOENAS, MOTIONS AND AUTHORITY OF BOARD AGENTS</th></tr>
<tr><td></td><td>use of documents should substitute for the current requirement that the Board seek an order from the superior court in the event a party refuses to comply with a subpoena.</td></tr>
<tr><td>Regulation 32190</td><td>Summary of Proposed Changes: PERB proposes to allow parties to file motions to strike an allegation, to defer a case to arbitration, or to dismiss or partially dismiss a complaint, including motions styled as motions for summary judgment or for judgment on the pleadings after the regional attorney has issued a complaint.

The draft revised regulation provides for the timelines for motions and responses, and provides that a party may not file such motions after the hearing has commenced until the charging party has fully presented evidence in its case. Other than that limitation, the draft revised regulation states that parties may make motions orally on the record. The draft revised regulation states that it would not apply to motions to revoke or limit subpoenas.

LCW Response: LCW agrees generally with the draft revision to Regulation 32190. We believe that these motions will increase efficiency at PERB by reducing the need for a hearing in certain matters. However, we provide the following comments specific to particular language in the draft revised regulation.

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<tr><th>Current</th><th>Proposed Change</th><th>Comment on Proposed Change</th></tr>
<tr><td>(a) Written motions made before, during or after a hearing shall be filed with the Board agent assigned to the proceeding. Service and proof of service pursuant to Section 32140 are required.</td><td>(a)(1) Motions to strike an allegation, to defer a case to arbitration, or to dismiss or partially dismiss a complaint, including motions styled as motions for summary judgment or for judgment on the pleadings, must be filed with the Board agent assigned to the proceeding no later than thirty (30)</td><td>SUGGESTED REVISION: The draft revised regulation is vague with respect to summary judgment motions or motions for judgment on the pleadings. It categorizes both motions as under the umbrella of "motion to dismiss" and refers to them as "motions styled as motions for summary judgment or judgment on the pleadings."

Other than providing for timelines for motions and oppositions, as well as a requirement regarding</td></tr>
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		days prior to the first day of the scheduled hearing, unless otherwise ordered by the Board. Service and proof of service pursuant to Section 32140 are required.	service, the draft revised regulation does not provide the requirements for a summary judgment or judgment on the pleadings motion. While we do not think it necessary that PERB require parties follow the same requirements as the Code of Civil Procedure for one of these motions, particularly summary judgment, it may assist parties in preparing useful motions if the draft revised regulation provided the requirements for such a motion, including the method for demonstrating undisputed facts.

SUBJECT: FILING REQUIREMENTS	
Regulation 32135	Summary of Proposed Changes: PERB proposes changes requiring parties who file documents to omit certain personal information, including reducing a minor's name to his/her initials. **LCW Response:** We are in favor of preserving minors' privacy, and our only concern is in the administrative burdens for ensuring compliance with this regulation. It will not always be apparent what the age is of all individuals referenced in a filing. We recommend PERB include a provision stating that a filing should only include a minor's initials, unless, after exercising reasonable due diligence, a party is unable to determine the age of an individual referenced in the filing.
32140	Proposed PERB Regulation 32140(a) contains a modification providing that "All documents referred to in these regulations requiring 'service,' except … when sent by electronic <u>service, as defined by Section 32094, and authorized in subdivision (b) of this section …</u>"

SUBJECT: REGULATIONS ON SUBPOENAS, MOTIONS AND AUTHORITY OF BOARD AGENTS	
	The previous reference to Section 32094 should be to Section 32093 instead, which defines "electronic service." There is also no current or proposed PERB Regulation 32094.

SUBJECT: SMCS REGULATIONS	
Regulation 32720	Summary of Changes: PERB proposes to specify that PERB's authority to conduct elections does not apply to: (1) elections involving transit districts, where SMCS conducts elections pursuant to applicable law, or (2) to consent elections that SMCS conducts pursuant to the MMBA, Trial Court Act, or Court Interpreter Act, pursuant to section 32999. **LCW Response:** We understand this proposal to clarify the existing scope of PERB's authority, rather than to expand or limit it. Accordingly, we agree.
Regulation 32792	Summary of Changes: This section governs impasse procedures after one party has declared impasse. Section 32792 currently provides that either party may request that the Board determine that an impasse exists, and appoint a mediator. PERB proposes to specify that this procedure only applies to parties covered under the Dills Act, EERA, and HEERA. **LCW Response:** We understand this proposal to clarify the existing scope of PERB's authority, rather than to expand or limit it. Accordingly, we agree.
Regulation 32999	Summary of Proposed Change: Clarifies that the SMCS's authority in election procedures does not apply to those

SUBJECT: SMCS REGULATIONS	
	conducted under the authority of the PERB Office of General Counsel, as set forth in (amended) Regulation 32720 (See notes above). **LCW Response**: We understand this proposal to clarify the existing scope of PERB and SMCS's authority, rather than to expand or limit it. Accordingly, we agree.

Liebert Cassidy Whitmore appreciates the Board's efforts in actively seeking input from its various practitioners and stakeholders in preparing clearer, more efficient and practically relevant regulations. We look forward to further working with the Board and providing comments to any future regulation packages.

If you have any questions regarding the above, please do not hesitate to contact us.

Very truly yours,

LIEBERT CASSIDY WHITMORE

K Chicas

Adriana E. Guzman
Kristin D. Lindgren
Heather R. Coffman
Kevin J. Chicas

KJC:cm